

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATE OF AMERICA,

- against -

VICTOR DIAZ,

Defendant.
-----X

NOTICE OF MOTION
S4 07 CR 387 (CLB)

Hearing Requested

PLEASE TAKE NOTICE, that upon the annexed Affirmation of Michael K. Burke, Esq. sworn to on the 7th day of February, 2008, the annexed Memorandum of Law and all prior proceedings, discovery, and pleadings had herein, the undersigned will move this District Court for the Southern District of New York, at the United States Courthouse, located at 300 Quarropas Street, White Plains, New York 10601 on March 11, 2008, or on any date the Court deems appropriate, for the following relief:

(1) An Order pursuant to F.R.C.P. 7(f) directing the government to provide Victor Diaz with a Bill of Particulars specifically including the following information:

(a) Set forth the specific acts or omissions under Counts One, Two, Four and Five applicable to Victor Diaz which evince a knowing and willful combining or conspiring to commit the crimes of kidnapping and Hobbs Act robbery; or the knowing and willful commission of the underlying substantive offense charged; including but not limited to, a statement of the approximate date, time and location where it is claimed the defendant joined the conspiracy charged herein or committed the substantive acts alleged;

(2) An Order pursuant to F.R.C.P. 16(a)(1)(E) directing the government to disclose co-defendant statements which inculcate Victor Diaz or any item or exhibit intended for use during its case-in-chief at trial or which is material to the defense; and for further necessary disclosure;

(3) An Order severing the trial of Victor Diaz from the other defendants in the above captioned indictment pursuant to F.R.C.P. 12 and F.R.C.P. 14;

(4) An Order directing the government to disclose any evidence of any exculpatory or mitigating nature pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963); *Strickler v. Greene*, 527 U.S. 263 (1999); *United States v. Agurs*, 427 U.S. 97 (1976); *United States v. Bagley*, 473 U.S. 667 (1985) and their progeny;

(5) An Order directing the government to disclose its witnesses' statements pursuant to F.R.C.P. 26.2 at least thirty (30) days prior to trial in this matter;

(6) An Order directing the government to disclose any intention to offer evidence at trial pursuant to F.R.E. 404(b) against Victor Diaz, at least thirty (30) days prior to trial in this matter;

(7) An Order suppressing any in-court identification of Victor Diaz as a result of an "impermissively suggestive" photographic identification conducted in this case, pursuant to *Stovall v. Denno*, 388 U.S. 293 (1967); *Simmons v. United States*, 390 U.S. 377 (1968); or if necessary a pretrial hearing;

(8) An Order directing the government to disclose the polygraph examination reports, relevant questions, and the control questions as reports of scientific tests pursuant to Fed.R.Crim.P. 16(a)(1)(F)(iii);

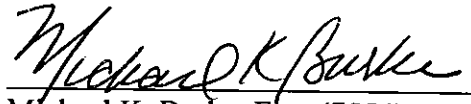
(9) An Order permitting the defendant, Victor Diaz, the right to adopt and join any and all relevant and proper motions brought by any co-defendant in this case;

(10) An Order permitting the defendant, Victor Diaz, to make such further motions as may become appropriate during these further proceedings;

(11) For such other and further relief as to this Court may seem just and proper.

Dated: February 7, 2008
Goshen, New York

Yours, etc.

A handwritten signature in black ink, appearing to read "Michael K. Burke", written over a horizontal line.

Michael K. Burke, Esq. (7554)
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To: Honorable Charles L. Brieant
United States District Court
Southern District of New York
300 Quarropas Street
White Plains, New York 10601

Clerk of the Court
United States District Court
Southern District of New York
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